IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

Crl.MC.No. 3710 of 2006(C)

CRL MP NO.4362 OF 2005 OF J.F.M.C, PARAVOOR

PETITIONER: ACCUSED 1 & 2

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1. RANI RADHAKRISHNAN, AGED 54,
   W/O. SEBASTIAN FELIX, RESIDING AT D-5/24,
   GREEN FIELDS, MAHAKALI CAVES ROAD,
   ANDHERI(EAST), MUMBAI-400 093.

2. SEBASTIAN FELIX, AGED 39,
   RESIDING AT -DO- -DO-

BY ADV. SRI.M.RATNA SINGH (SR.)
SRI. M.K.VENUGOPALAN
SRI.K.PRAVEEN KUMAR
SRI.S.SHYAM

RESPONDENTS: STATE & COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
   THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
   NORTH PARAVUR.

3. SOMAN, S/O. CHANDRAN,
   ALAPATTU HOUSE, VAZHIKULANGARA,
   NORTH PARAVUR.

BY ADV. DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR
SRI.M.R.JAYAPRASAD
SRI.K.K.RAJEEV

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 27/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3710 of 2006

Dated this the 27th day of February 2007

O R D E R

The petitioners are spouses. They are accused 1 and 2 in a crime registered against them alleging commission of offences punishable under Section 420 read with 34 I.P.C. There are altogether four accused persons.

2. The crime has been registered on the basis of a private complaint filed by the third respondent herein before the learned Magistrate which was referred to the police under Section 156(3) Cr.P.C. The crux of the allegations against the petitioner is that accused 1,2 and 4 went to the house of the defacto complainant during the first week of June 2004. They allegedly made the complainant believe that they are influential and have high connections. They offered to make available job in London for any person in whom the complainant was interested. Accordingly, the complainant, believing the words of accused 1,2 and 4 decided to secure employment for his brother-in-law, one Salim Divakaran. Accused 1,2 and 4 allegedly made representations that they will make an employment visa for the

said Salim Divakaran available to work at London. During the last week of June, all the three accused allegedly went to the house of the complainant again and repeated the assertions. Believing the representations of accused 1,2 and 4, the petitioner sent an amount of Rs.50,000/- to the third accused by transfer. Later, the complainant transferred an amount of Rs.5,00,000/- to the joint account of the petitioners.

3. Though it was agreed that employment shall be secured at London, before the commencement of the journey, the accused persons informed the complainant that the brother-in-law will have to travel to South Africa and a further amount of Rs.24,000/- must be paid. Thus, altogether an amount of Rs.5,74,000/- was paid by the defacto complainant on the basis of the representations made by the accused persons including the petitioners herein.

4. No job was secured in London. Instead the brother-in-law of the defacto complainant is languishing now in South Africa without any employment. The amount is not returned. The complainant is now satisfied that false representations were deliberately made by the accused persons including the

petitioners with the only intention of inducing them to part with an amount of Rs.5,74,000/-. This amounts to the offence of cheating punishable under Section 420 read with 34 I.P.C. It was on the basis of these allegations that the private complaint was filed and the learned Magistrate referred the complaint to the police under Section 156(3) Cr.P.C. Investigation is in progress. The petitioners have been granted anticipatory bail for a short period of time by the court at Mumbai where the petitioners are permanently residing. The application for anticipatory bail by the petitioners is pending before another Bench of this court, it is submitted.

5. The learned counsel for the petitioners submits that the F.I.R registered against the petitioners is liable to be quashed invoking the powers under Section 482 Cr.P.C. What is the reason? The learned counsel for the petitioners submits that the first petitioner is employed as Air Hostess in Air India and the travel documents relating to her which are unimpeachable in nature would show that the petitioner could not have been present in Kerala during the first week of June 2004 and the last week of June 2004 during which period it is alleged that the

petitioners had indulged in the culpable conduct of making false representations to induce the complainant to part with money. In as much as the first petitioner was not available in India during that period, that is the first and the last week of June 2004, the foundation of the allegation is lost and therefore the further proceedings in investigation may not be permitted to continue in so far as it relates to the first petitioner.

6. Alternatively, it is contended – that contention is incorporated by a subsequent amendment of the petition under Section 482 Cr.P.C - that the allegations, even if true, can give rise to only a civil liability and not culpable liability whatsoever.

7. Notice was given to the learned Public Prosecutor and the defacto complainant. They have entered appearance. Case diary has been made available for my perusal. The case diary reveals that the investigation is progressing at a very slow pace. No worthwhile material has been collected subsequent to the filing of the private complaint and the registration of the crime. Investigation is in progress, it is indicated from the case diary.

8. The learned counsel for the respondent/complainant contends that no crucial conclusion can be drawn from the

travel documents produced which would indicate that the petitioner was not available in Kerala during the first and the last week of June 2004. It would be puerile to give over emphasis and undue significance to the vague submissions of the time of the alleged representation as the first week and the last week of June 2004. The counsel relies on documents to show that the first petitioner was admittedly available here during the period 17/06/2004 to 22/6/2004. The mere fact that some inaccuracy has crept into the complaint, while vaguely referring to the period during which the representation was made, cannot lead to the consequence of quashing of the F.I.R registered, submits the learned counsel for the defacto complainant. The materials indicate that the first petitioner was available here from 17/6/2004 to 22/6/2004 and if the complainant without being conscious of the significance of the specification of the dates referred to the relevant period as the first week and the last week of June 2004, no crucial adverse conclusion about the complaint can and may be drawn, submits the learned counsel for the respondent/complainant.

9. Of course, the court has powers under Section 482 Cr.P.C to quash an F.I.R. This discrepancy in the dates mentioned vaguely as the first week and the last week of June 2004 cannot, in these circumstances, according to me, operate as a sufficient reason to justify quashing of the proceedings. At any rate, I would think it more prudent and reasonable to permit the investigator to complete the investigation and come to crucial conclusions on the disputed facts. The discrepancy regarding dates are not, according to me, sufficient by itself to quash the proceedings.

10. It appears that there is no serious or significant dispute about the receipt of the amount of Rs.5,00,000/- in the joint account of the petitioners. At any rate, no such dispute is seen raised in this criminal miscellaneous case before me. The explanation that the petitioners have to offer for the receipt of the said amount of Rs.5,00,000/- in their joint account is certainly of relevance and significance. No such explanation is seen offered. If with an intention to induce the complainant to part with money, false representations were made and the complainant were deceived by those false representations to part

with money, it cannot be said that the ingredients of Section 420 I.P.C are not indicated. If, on the contrary, it is indicated that there was only a bona fide business transaction and there was failure to secure visa for employment in London and that the brother-in-law of the complainant was satisfied with the job allegedly secured for him in South Africa, the offence may not lie at all. It would be presumptuous for this court to hazard any opinion on the possible result of investigation at this stage. I am of the opinion that the investigator must conduct and complete the investigation and submit an appropriate report under Section 173 Cr.P.C.

11. The learned counsel for the petitioners submits that the first accused is put to great harassment and vexation on the basis of this investigation. She has been suspended from service. She is likely to lose her job. I am of the opinion, in these circumstances, that there can be a direction to the investigating officers to complete the investigation, as expeditiously as possible and submit the appropriate final report under Section 173 Cr.P.C. The petitioners must co-operate with the investigators. I expect such investigation to be completed as

expeditiously as possible, at any rate, within a period of two months from this date. Needless to say that it will have to be ascertained in such investigation whether there was any intention to deceive the complainant or his brother in law when the transaction was entered into officially and whether the complainant's brother in law had voluntarily accepted employment at South Africa without any objection.

12. The learned counsel for the petitioners prays that personal appearance of the petitioners may not be insisted by the courts. An application for anticipatory bail is admittedly pending and I do not want to express any opinion on that aspect of the matter.

13. In the result, this criminal miscellaneous case is dismissed but with the above directions to the investigating officer of the need for expeditious completion of the investigation.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006